



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/170056

PRELIMINARY RECITALS

Pursuant to a petition filed November 9, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Grant County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on January 27, 2016, by telephone. Hearings set for December 2, 2015 and January 7, 2016 were rescheduled at the petitioner's request.

The issue for determination is whether the county correctly determined an FS overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Grant County Dept. of Social Services
P.O. Box 447
Lancaster, WI 53813

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Grant County.
2. In 2014 petitioner received FS in a household that included her husband and children. A review was completed in March, 2014. At the time budgeted household income was from petitioner's husband's job with [REDACTED] at \$464.73 weekly, which, for FS purposes, was \$1,998.34 monthly. A notice dated March 19, 2014 informed the couple that they would receive \$358 monthly FS, and that they should report to the county if monthly income rose above \$2,664.17.

3. Petitioner's husband's income in April, 2014 was \$3,350.76. It continued to be above \$3,000 monthly thereafter with only a couple exceptions. The household did not report the increase to the county.
4. The couple filed a six-month report form in August, 2014. No increase in income was reported.
5. In late January, 2015, a renewal form was filed. [REDACTED] income was reported to be \$23.61 per hour, 33 hours per week (\$779 per week). The increase was implemented effective March 1, 2015.
6. The county discovered the increased income, and also that petitioner's husband briefly had a second, unreported job, via a state wage match. The county obtained actual income from [REDACTED]. The second employer, [REDACTED], initially did not respond and the county averaged the income showing on the wage match.
7. By a notice dated October 26, 2015, the county informed petitioner that the household was overpaid \$3,044 in FS from June 1, 2014 through March 31, 2015, claim no. [REDACTED], with petitioner and her husband liable for the claim. After petitioner appealed the county received the [REDACTED] income information; the county then recalculated the overpayment to be \$2,955.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

FS households must report increases in income when household income rises above 130% of the federal poverty level. FS Handbook, App. 6.1.1.2. Households are informed of the requirements in notices of decision such as the March 19, 2014 one issued to petitioner's household. In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed, as set out in the federal code and the FS Handbook, App. 4.6.

In this case the county re-determined the household's FS using the actual income versus the lower amounts originally budgeted. In March, 2015, the budgeted amount was higher than actual income, so the household was underpaid an amount that offset the overpayment. In all other months the household was overpaid. I have reviewed the calculations done after the actual [REDACTED] income was entered; I conclude that the overpayment was calculated correctly.

Petitioner's primary concern was why it took so long for the county to discover the overpayment. The primary reason is that when petitioner's six-month report form was filed it noted no change in income. The county at that point had no reason to suspect that the report was filed incorrectly. I checked the computer record. The August, 2014 monthly report showing no increase in income is in the record, and there is no other suggestion that income increased until the January, 2015 renewal, which the county acted upon.

Petitioner's husband also noted a discrepancy in the amount of income reported by his employer. However, I reviewed the record closely, and the amounts reported by the employer were accurate. The confusion is

that the employer report lists, at the top, "Pay ending," but then lists the date of the paycheck at the bottom. Thus from the top date it looks like petitioner's husband was paid five times in December, 2014, but for the date "Pay ending" November 28, 2014, the check date was December 3. Thus petitioner's husband was paid six times in December for a total of \$5,290.67.

CONCLUSIONS OF LAW

The county correctly determined that petitioner was overpaid \$2,955 in FS between June, 2014 and April, 2015 because she failed to report an increase in income.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of February, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 2, 2016.

Grant County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability